

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

JEFF OTIS	§	PLAINTIFF
	§	
v.	§	CIVIL NO.: 3:13cv1060-LG-RHW
	§	
CAROLYN R. MOSLEY	§	DEFENDANT

**ORDER SUSTAINING IN PART, OVERRULING IN PART, AND
FINDING MOOT IN PART DEFENDANT’S OBJECTIONS TO CERTAIN
DEPOSITION TESTIMONY DESIGNATED BY PLAINTIFF IN THE [40]
PRETRIAL ORDER**

BEFORE THE COURT are Defendant Carolyn R. Mosley’s objections to the deposition testimony of Dr. Kevin Bradley (“Dr. Bradley”) and Dr. Scott Dull (“Dr. Dull”) designated by Plaintiff Jeff Otis in the Pretrial Order [40]. Also before the Court are Defendant’s objections to the deposition testimony of Dr. Greg Wood (“Dr. Wood”) designated by Defendant in the Pretrial Order [40]. For the reasons that follow, the Court sustains in part, overrules in part, and finds moot in part Defendant’s objections.

I. DISCUSSION

Plaintiff has designated certain deposition testimony of Dr. Bradley and Dr. Dull, which she intends to offer at trial. Pretrial Order 9-12 [40]. Defendant raises thirteen objections to Dr. Bradley’s designated testimony and three objections to Dr. Dull’s designated testimony. *Id.* Defendant also raises three objections to the deposition testimony of Defendant’s own retained expert, Dr. Wood. *Id.* at 13.

A. Dr. Bradley's Deposition Testimony

With respect to Defendant's Objections to the deposition testimony of Dr. Bradley, Defendant's Objections to the following designations are sustained:

27:17-29:22
29:23-30:14
34:6-35:8
35:9-18
42:17-43:3
4[3]:17-23
44:4-10
63:1-22
68:5-69:25

See Fed. R. Civ. P. 26(e)(1), 37(c)(1); *Hamburger v. State Farm Mut. Auto. Ins. Co.*, 361 F.3d 875, 883 (5th Cir. 2004) (noting that testimony of a treating physician must be addressed in the physician's medical records so as to alert the opposing party that the treating physician may give expert testimony on those subjects); *Francois v. Colonial Freight Sys., Inc.*, No. 3:06cv434-WHB-L, 2007 WL 4564866, at *3 (S.D. Miss. Dec. 21, 2007) (finding "argument that [defendant] was provided a medical waiver and, therefore, could have obtained [plaintiff's] medical records/bills

lacks merit as the [Federal Rules] specifically require that [plaintiff] provide a copy or description of tangible evidence in its possession that it may use to support its claims, . . . including materials bearing on the nature and extent of injuries suffered”).

Defendant’s Objections to the following testimony have been rendered moot by Plaintiff’s response, which concedes each Objection:

23:18-27:16
27:17-29:22 (only to the extent that the Objection is directed to Plaintiff’s Exhibit 2)
32:23-33:23

See Pretrial Order 10-11 [40].

Defendant’s remaining Objections to the following designations of Dr. Bradley’s deposition testimony are overruled:

35:19-25
41:23-42:6

See Caldwell v. Wal-Mart Stores E., LP, No. 3:10cv651-DPJ-FKB, 2012 WL 1712377, at *1 (S.D. Miss. May 14, 2012) (applying general rule that “treating physicians may offer expert testimony consistent with, and limited by, the medical records and bills referenced in [the offering party’s] disclosures”).

B. Dr. Dull's Deposition Testimony

With respect to Defendant's Objections to the deposition testimony of Dr. Dull, Defendant's Objections to the following designations are sustained:

11:18-24
16:23-19:4

See Fed. R. Evid. 801; Fed. R. Civ. P. 32(b), (d); *Francois*, 2007 WL 4564866, at *3.

Defendant's Objections to the following designation of Dr. Dull's testimony are overruled:

25:15-26:13

See Hamburger, 361 F.3d at 883.

C. Dr. Wood's Deposition Testimony

With respect to Defendant's objections to Dr. Wood's deposition testimony, the Objections to the following designations are MOOT on grounds that Plaintiff has not designated these portions of Dr. Wood's deposition:

29:7-11
45:17-23
46:16-21

See Pretrial Order 8-9 [40].

II. CONCLUSION

IT IS, THEREFORE, ORDERED AND ADJUDGED that Defendant Carolyn R. Mosley's Objections to the deposition testimony of Dr. Kevin Bradley and Dr. Scott Dull, as designated by Plaintiff, and to the deposition testimony of Dr. Greg Wood are **OVERRULED IN PART, SUSTAINED IN PART, and MOOT IN PART**, as delineated herein.

SO ORDERED AND ADJUDGED, this the 3rd day of April, 2015.

s/ *Louis Guirola, Jr.*

Louis Guirola, Jr.
Chief United States District Judge